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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re STEPHANIE U. et al., Persons Coming Under the Juvenile Court Law.	B234401 (Los Angeles County Super. Ct. No. CK84983)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. STEPHANIE Q. et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Gerard McCusker, under appointment by the Court of Appeal, for Stephanie Q., Defendant and Appellant.

Julie E. Braden, under appointment by the Court of Appeal, for Jaime U., Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel for Plaintiff and Respondent.

Stephanie Q. and Jaime U., the mother and presumed father of four-year-old Stephanie U., two-year-old Delilah U. and one-year-old Mariah U., appeal from the juvenile court's findings of jurisdiction and its disposition order removing the children from the custody of Jaime and placing the children in the home of their mother under the supervision of the Los Angeles County Department of Children and Family Services (Department). Both parents contend there was insufficient evidence the children were at risk of serious physical harm because of their criminal history and drug use. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Department's Investigation and the Detention of the Children*

In August 2010, shortly after the birth of Mariah, the Department investigated Stephanie[1] and Jaime following a hotline complaint of substance abuse (both drug and alcohol) by the parents, general neglect of their children (filthy home, inadequate food and inattention to Delilah's medical needs) and physical abuse by Jaime and emotional abuse by Stephanie. The referral also indicated Stephanie and Jaime were constantly fighting with each other. In early September 2010, while the initial complaint was being investigated, a second referral was received claiming Stephanie was under the influence of alcohol and failed to adequately supervise the children.

The Department investigated the referrals. It was learned that both parents had criminal records and a history of substance abuse: Stephanie had convictions for theft and possession of controlled substances, as well as driving under the influence of alcohol in July 2009 and a driving-under-the-influence warrant in July 2010; Jaime for robbery, aggravated assault and several firearm-related offenses. In addition, Jaime's parental rights over another child had been terminated in 2007 due at least in part to his noncompliance with court orders to participate in a substance abuse program, drug testing and a parenting class.

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[1] We refer to Stephanie Q. in this opinion as Stephanie. We identify her oldest daughter, who shares the same first name, as Stephanie U.

Jaime admitted he was currently using marijuana. Stephanie insisted she had not used illegal drugs during the past four years and explained she had not completed the criminal-court-ordered alcohol program because of lack of funds. The children were found to be "healthy and clean."

Both parents submitted to drug tests. Jaime tested positive for marijuana. Stephanie's test was negative for any illegal substances. Both Stephanie and Jaime subsequently failed to participate in Department-requested drug testing, and both declined the Department's offer of voluntary services. They blamed the children's maternal grandmother for creating the problems in the family and making the child abuse complaints.

The Department held a team decision meeting on October 29, 2010 to discuss the Department's ongoing concerns for the safety of the children. Stephanie and Jaime continued to blame the maternal grandmother for involving the Department in their lives and refused to accept the recommendation that they participate in substance abuse programs, counseling and random drug testing. When the meeting facilitator mentioned possible detention of the children, Jaime became angry, shouted in an aggressive manner, ignored a request to calm down, grabbed the oldest child (then only three years old) and left the meeting. Stephanie followed him shortly thereafter with the other two children.

The children were detained late in the day on October 29, 2010. In its detention report the Department explained its social worker "conducted a risk assessment and the results indicated that the children have a very high risk of being abused if allowed to remain in the home. Both parents have a long history of criminal records and substance abuse records, their non-compliance [with Department] recommendation, their extreme angers and hostility toward maternal grandmother and DCFS. In addition, all 3 children are very young age . . . which places their children . . . at immediate risk of physical [and]/or emotional harm."

The Department filed a dependency petition on November 3, 2010 under Welfare and Institutions Code section 300, subdivision (b) (failure to protect),[2] alleging as to both parents that their history of illicit drug and alcohol abuse and current alcohol abuse, and as to Jaime his current marijuana abuse, render them incapable of providing the children with regular care and supervision and endanger the children's physical and emotional health and safety. The petition also alleged one of the children's sibling (Jaime's son) received permanent placement services due to Jaime's substance abuse.

At the detention hearing the court released the children to Stephanie on condition that Jaime not reside in the home. Both parents were ordered to drug test on a weekly basis. Jaime was permitted monitored visits, but Stephanie was not allowed to serve as the monitor.

2. *The Jurisdiction and Disposition Hearings*

The Department's jurisdiction/disposition report dated January 14, 2011 stated Stephanie had admitted daily methamphetamine use for 10 years, from age 13 until age 22, but insisted she stopped using methamphetamine in 2006. Although she had been convicted of driving under the influence of alcohol in 2009, Stephanie also denied being an alcoholic. Stephanie acknowledged Jaime "smokes a joint 'here and there,'" but said he never used marijuana in the home or in the presence of the children. She also claimed she never left the children alone with Jaime. Although Jaime initially agreed to a telephone interview, when he was asked about his possible gang involvement and the circumstances surrounding the adoption of his other child, Jaime terminated the interview. The Department also reported neither parent had completed prior court-ordered substance abuse programs although Stephanie had apparently once again entered a treatment program.

In view of the parents' history of drug and alcohol abuse and their failure to adequately address that problem, the Department concluded the children were at risk of physical harm. However, it also reported, since the children were released to Stephanie

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[2] Statutory references are to the Welfare and Institutions Code.

at the detention hearing, "there have been no issues that would merit the re-detention of the children. Nevertheless, given the parents' history of alcohol and drugs, the Department would recommend that supervision and intervention be ordered for the safety of the children." The Department suggested family maintenance services for Stephanie and reunification services for Jaime on condition he randomly test for alcohol and drugs and complete a drug rehabilitation program.

A supplemental report dated February 28, 2011 stated Jaime had once again tested positive for marijuana after he had tested clean several months earlier. Contacted for an interview in mid-February 2011, Jaime refused to discuss the allegations in the section 300 petition. He confirmed he was homeless and indicated he had not yet begun any counseling or treatment.

A further supplemental report dated April 19, 2011 stated the Department had not had any contact with Jaime since mid-February other than a brief conversation to set up an appointment that Jaime failed to keep. Stephanie was living in a studio apartment with the three children and continued to attend her substance abuse program "albeit inconsistently." She had missed several drug tests. Those tests she did take were all negative.

The contested jurisdiction hearing was held on April 19, 2011. The Department's detention report dated November 3, 2010 and its reports dated January 14, 2011 and April 19, 2011 were admitted into evidence. The Department did not introduce any live testimony, and neither Stephanie nor Jaime presented any evidence on his or her own behalf.

The children's counsel argued the Department was acting too conservatively with respect to Stephanie, who had readily admitted she had an alcohol and a drug problem in the past, but who was not a current user of alcohol or drugs: "I think there are a lot of risk factors in this case, but I haven't seen evidence from the Department that the mother poses a current risk to these children, that she has done anything to put these children in harm's way." Although Jaime was concededly a current marijuana user, children's

counsel also argued the evidence showed Stephanie never left the children alone with him. She suggested the case was more appropriately treated with informal services although she recognized neither Stephanie nor Jaime had cooperated with the Department when such services were offered.

Stephanie's counsel joined in the request that the section 300, subdivision (b), count as to her be dismissed, emphasizing there was no evidence Stephanie was currently abusing alcohol. Jaime's counsel argued his test results showing low levels of marijuana and his criminal history did not equate to a current risk to the children.

The court sustained the petition, amending count b-1 concerning Stephanie to read: "The children[']s mother] has an extensive history of illicit drug and alcohol abuse. The mother has a criminal history of convictions for possession of controlled substances, possession of a controlled substance/paraphernalia and driving under the influence of alcohol. The mother's history of drug and alcohol abuse endangers the children's physical and emotional health and safety, placing the children at risk of physical and emotional harm, damage and danger." Count b-2 concerning Jaime was sustained as pleaded: "The children[']s father] has a history of illicit drug and alcohol abuse including the abuse of cocaine and is a current abuser of marijuana and alcohol which renders the father incapable of providing the children with regular care and supervision. The children's sibling . . . received permanent placement services due to the father's substance abuse. On or about 8/24/2010, the father had a positive toxicology screen for marijuana. The father's substance abuse endangers the children's physical and emotional health and safety, placing the children at risk of physical and emotional harm, damage and danger."

Immediately following the jurisdiction findings, the court ordered the care, custody and control of the children removed from Jaime and placed them with Stephanie (home-of-parent-mother) under the supervision of the Department. The court ordered family maintenance services for Stephanie and family reunification services for Jaime with monitored visitation.

DISCUSSION

1. *Jaime's Appeal Is Timely*

The Department contends Jaime's notice of appeal, filed August 10, 2011, was not timely and we have no jurisdiction to consider his appeal from the April 19, 2011 jurisdiction findings and disposition order. (See *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1450 ["[a]ppellate jurisdiction to review an appealable order depends upon a timely notice of appeal"]; *In re Megan B.* (1991) 235 Cal.App.3d 942, 950 ["appellate jurisdiction is dependent upon the filing of a timely notice of appeal"].) As the Department explains, notice of the referee's jurisdiction findings and disposition order was mailed to the parties and their counsel on April 19, 2011.[3] Accordingly, that order became final on April 29, 2011 (Cal. Rules of Court, rule 5.540(c) [order of juvenile court referee becomes final 10 calendar days after service of a copy of the order and findings if no timely application for rehearing has been made]); and Stephanie and Jaime had 60 days from that date—that is, until June 29, 2011—to file a notice of appeal. (Cal. Rules of Court, rule 8.406(a)(2).)

Stephanie filed a timely notice of appeal on June 28, 2011, which extended Jaime's time to file a cross-appeal "until 20 days after the superior court clerk mails notification of the first appeal . . . ." (Cal. Rules of Court, rule 8.406(b).) Although notice of Stephanie's appeal was mailed by the clerk to Jaime's counsel on July 12, 2011, no notice was sent to Jaime himself; and the 20 day period for filing a cross-appeal was never triggered. To be sure, in a supplemental filing with the juvenile court on April 19, 2011, the Department reported Jaime had indicated during his last personal contact with the social worker that he was then homeless and had no contact information. Nonetheless, the clerk should have sent notice of Stephanie's appeal to Jaime's last

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[3] Notice to Jaime was sent to the address he provided when he initially appeared in the case on January 14, 2011, which he identified as his mother's address.

known address, as was done with the notice of the referee's findings and order.[4] Jaime's notice of appeal, therefore, is timely.

In any event, Stephanie has challenged the jurisdiction findings as they relate to Jaime, as well as to her.[5] Because a jurisdiction finding against one parent is sufficient to warrant dependency jurisdiction (see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 ["the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent"]; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554), we would review the evidence to support the juvenile court's findings as to each parent in this case even if only Stephanie's appeal were properly before us.

2. *Standard of Review*

When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to that court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) We resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004-1005.) "'However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere

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[4] When Jaime was arraigned on January 14, 2011, he was told by the court that the address he had provided "is an address we are going to use for notices of the hearings in the future."

[5] Stephanie's briefs on appeal discuss the sufficiency of the evidence to support the juvenile court's jurisdiction findings concerning Jaime. In addition, as authorized by rule 8.200(a)(5) of the California Rules of Court, she has adopted those arguments set forth in Jaime's opening brief to the extent they inure to her benefit.

scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, "[w]hile substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations]." [Citations.] "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record."'" (*In re David M.* (2005) 134 Cal.App.4th 822, 828, italics omitted.)

3. *The Jurisdictional Findings as to Jaime Are Supported by Substantial Evidence*

The purpose of section 300 "'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.'" (§ 300.2; see, e.g., *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) The Legislature has further declared, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment." (§ 300.2.) Exercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child is "of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)[6]

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[6] Section 300, subdivision (b), provides: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Actual harm is not a prerequisite to jurisdiction in dependency proceedings. (See *In re Giovanni F.*, *supra*, 184 Cal.App.4th at p. 598 ["[t]he child need not have been actually harmed in order for the court to assume jurisdiction"]; *In re James R.* (2009) 176 Cal.App.4th 129, 135.) Section 300, subdivision (b), requires only (1) proof of neglectful conduct by the parent in one of the specified forms, (2) causation, and (3) either serious physical harm or illness to the child *or* a "substantial risk" of such harm or illness. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820; *In re David M.*, *supra*, 134 Cal.App.4th at p. 829.) In particular, as applicable to the case at bar, section 300, subdivision (b), provides a basis for juvenile court jurisdiction if there is a substantial risk the children will suffer serious physical harm or illness caused by the parent's inability to provide regular care for them because of the parent's substance abuse. (*In re James R.*, at p. 135.)

Jaime concedes the Department proved his past serious criminal record, significant history of substance abuse and current, ongoing use of marijuana. In addition, the record established Jaime had failed to participate in counseling and drug testing when these children's half-sibling was removed from his custody in 2006; and he, as well as Stephanie, refused the Department's offer of voluntary services to assist with their substance abuse problems.

Even though Jaime's three extremely young children[7] had not yet suffered any actual physical injury, his continued failure to recognize and address his long-term substance abuse problem, together with his positive drug test after the section 300 petition had been filed, "pose[d] an inherent risk to their physical health and safety" (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824) and constituted substantial evidence the children were at risk of future serious physical harm or illness. (Cf. *id.* at p. 826 [while mother's dependency on drugs or alcohol alone did not necessarily establish a substantial risk of serious physical harm to child, her "creation of a home environment providing [the child] with the means, the opportunity, and at least the potential motives to begin

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[7] At the time of the continued jurisdiction hearing Mariah was only nine months old, Delilah was not yet two, and Stephanie U. was three and one-half.

abusing drugs himself" supported exercise of dependency jurisdiction]; see also *Wainwright v. Superior Court* (2000) 84 Cal.App.4th 262, 268-269 [in context of family law proceeding, Legislature sought to recognize substance abusing homes as threat to health, safety and welfare of children].)[8] Any failure by the Department to expressly identify a "specific, defined risk of harm" resulting from Jaime's substance abuse (see *In re David M., supra*, 134 Cal.App.4th at p. 830) was outweighed here by Jaime's refusal to allow less drastic measures to be utilized to protect the children. (See, e.g., § 16506, subd. (b) [family maintenance services available without dependency adjudication where child is in "potential danger of abuse, neglect, or exploitation," and family is willing to accept services and participate in corrective efforts].)

4. *The Jurisdictional Findings as to Stephanie Are Supported by Substantial Evidence*

Stephanie has a criminal record and a history of substance abuse, including a fairly recent conviction for driving under the influence of alcohol, and, like Jaime, failed to complete prior court-ordered programs to address her problem. In addition, Stephanie declined the Department's offer of voluntary services when the family first came to the attention of the Department. (Stephanie subsequently explained she did not understand her unwillingness to participate in those services could result in the detention of her children; had she known, she would have complied from the outset.) Although she admits daily use of methamphetamine from the age of 13 to the age of 22, Stephanie contends she stopped in 2006 when she was 23 years old and insists she does not have an alcohol or drug problem. Stephanie's drug counselor informed the social worker Stephanie was in the first of four phases of a treatment program, but described her as consistent in attendance and an active participant in discussions. The Department

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[8] Because Jaime does not challenge the juvenile court's disposition order on appeal, we need not decide whether, in the absence of any evidence of actual harm, it was proper to remove the children from his physical custody under section 361, subdivision (c)(1), rather than providing means to assure the children were protected with Jaime continuing to live in their home.

presented no evidence Stephanie was currently abusing alcohol, methamphetamine or any other illegal drug.

The "inherent risk" to the children's health and safety posed by Stephanie's untreated substance abuse problem is no doubt less than that created by Jaime—a difference the juvenile court consistently recognized, beginning with its release of the children to Stephanie at the detention hearing and continuing through its decision to place them with her following the jurisdiction and disposition hearing with a home-of-parent order.[9] Nonetheless, indulging all legitimate inferences to uphold the court's order, and particularly because Stephanie refused to voluntarily participate in programs offered to her to address her substance abuse problem, we conclude substantial evidence supports the juvenile court's section 300, subdivision (b), finding as to Stephanie.[10]

DISPOSITION

The juvenile court's findings and orders are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J. JACKSON, J.

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[9] In a petition for extraordinary writ filed while this appeal was pending, Stephanie reported on June 28, 2011 the Department filed a subsequent petition pursuant to section 387 alleging Stephanie had allowed Jaime unmonitored visitation with the children in violation of the juvenile court's order. On August 10, 2011 the court sustained the section 387 petition, ordered the children removed from Stephanie's custody and directed the Department to provide family reunification services for Stephanie. Those findings and orders are not before us.

[10] As discussed, a jurisdiction finding as to one parent is sufficient to warrant dependency jurisdiction regardless of the other parent's conduct. (See *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16; *In re Alysha S., supra*, 51 Cal.App.4th at p. 397; *In re Jeffrey P., supra*, 218 Cal.App.3d at pp. 1553-1554.) Accordingly, even were we to reverse the section 300, subdivision (b), findings as to Stephanie, we would affirm the juvenile court's exercise of jurisdiction over the three children and their removal from the care and custody of Jaime in this case.